
(1952) 04 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No's. 200, 333, 334, 591, 615, 723 and 777 of 1951

C.S.S. Motor Service, Tenkasi and Others

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 25-04-1952

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(6), 301
Motor Vehicles Act, 1939 — Section 42, 43A, 47, 47(1), 48

Citation : AIR 1953 Mad 279 : (1953) ILR (Mad) 304 : (1953) 66 LW 85 :
(1952) 2 MLJ 894

Hon'ble Judges : Rajamannar, C.J;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Ayyar, K. Hariharan, K. Bashyam Iyengar, M. Natesan, S. Srinivasan, N.G. Krishna Ayyangar and N. Panchapagesa Ayyar, for the Appellant; A.G. for Govt. Pleader and on behalf of Attorney General of India, M.K. Nambiar, N.G. Krishna Iyengar, G.R. Jagadisa Iyer, R. Raghavachariar, D. Narasaraju, R.S. Venkatachari and T. Chengalvarayan, for the Respondent

Judgement

Venkatarama Aiyar, J.—(W. P. Nos. 333, 334 and 615 of 1951): These applications raise questions of considerable importance about the

validity of the permit system under the Motor Vehicles Act and of some of the provisions of that Act.

2. The facts in W. P. No. 333 of 1951 are these: In the Tenkasi Utbumalai route in the district of Tirunelveli respondent 2 was running one stage

carriage. On 25-7-1950 applications were invited for a second stage carriage service over the route. Among the applicants were the petitioner and

respondent 2. On 25-8-1950 the Regional Transport Authority granted the permit to respondent 2. On appeal the Central Road Traffic Board set

aside this order on 5-11-1950 and granted the permit to the petitioner. The respondent moved the Government u/s 64A of the Act and after

various proceedings which it is unnecessary now to detail the Government passed an order on 5-7-1951 setting aside the order of the Central

Road Traffic Board and restored that of the Regional Transport Authority. The petitioner now seeks to set aside this order as unconstitutional.

3. The facts in W. P. No. 334 of 1951 are these: A new route between Tenkasi and Sendamaram in the district of Tirunelveli was opened in 1950

and applications were invited for two stage carriage permits in that route. The petitioner and respondent 2, who may be mentioned, are the same

as in W. P. No. 333 of 1951 were among the sixteen applicants for the permit. On 8-1-1951 the Regional Transport Authority granted one permit

to the petitioner and the other to respondent 2 and dismissed the other applications. On appeal by respondent 2 the Central Road Traffic Board

passed an order on 2-4-1951 setting aside the grant of permit to the petitioner and granting it to respondent 2. The petitioner moved the

Government u/s 64A, Motor Vehicles Act but the Government rejected the petition summarily on 30-7-1951 by an order which is in these terms:

The Government sees no reason to interfere". It is this order that is attacked in W. P. No. 334 of 1951.

4. In W. P. No. 615 of 1951 the material facts are these: In 1950 it was decided to open a new bus route between Kodavasal and Saliamangalam

in the Tirunelveli district. The petitioner first got permits to run two stage carriages on this route. Later on applications were invited for two more

permits. There were eight applicants including the petitioner and respondents 4 and 5. On 2-6-1951 the Regional Transport Authority granted

these two permits to the petitioner. On appeal the Central Road Traffic Board passed an order on 10-8-1951 setting aside the grant of the two

permits to the petitioner and dividing it between respondents 4 and 5. A revision petition filed by the petitioner u/s 64A was dismissed on 4-10-

1951, the order of the Government being in these terms: "Government sees no reason to interfere". It is this order that is questioned in W. P. No.

615 of 1951.

5. These and other similar petitions were heard together as they raised more or less the same controversies about the validity of the various

provisions of the Motor Vehicles Act. Notice was issued to the Attorney General of India as the legislation impugned was an Act of Central

Legislature, and the learned Advocate General has addressed us on his behalf as well. We had the benefit of able and exhaustive arguments on

various aspects of the case by Mr. K. V. Venkatasubramanja Aiyar for the petitioner in W. P. Nos. 333 and 334 of 1951, by Mr. K. Bhashyam

Aiyangar for the petitioner in W. P. No. 615 of 1951, by other learned counsel who appeared for the petitioners in other cases, by the learned

Advocate General on behalf of the Government respondent and by Mr. M. K. Nambiar on behalf of the successful applicants who are

respondents in these petitions.

6. Before dealing with the several contentions urged in the case it is necessary to set out the relevant provisions of the Act. They occur in Chapter

4 of the Act entitled ""Control of Transport Vehicles"". u/s 42 no owner of a transport vehicle can use it in any public place

save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of

the vehicle in that place in the manner in which the vehicle is being used.

7. Section 43A empowers the Provincial Government to issue such orders and directions of a general character as it may consider necessary in

respect of any matter relating to the road transport to the provincial transport authority or regional transport authority and such orders are to be

given effect to by the transport authority. Application for permit should be made u/s 45 to the Regional Transport Authority and it should contain

the particulars mentioned in Section 46. Then follows Section 47 (1) which is in these terms :

A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely :

(a) the interest of the public generally;

(b) the advantages to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising

from journeys not being broken;

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by these services and the effect

upon those services of the service proposed;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services;

and

(f) the condition of the roads included in the proposed route or routes;

and shall also take into consideration any representation made by persons already providing road transport facilities along or near the proposed

route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any

association interested in the provision of road transport facilities.

Section 48 runs as follows :

A Regional Transport Authority may, after consideration of the matters set forth in Sub-section (1) of Section 47, -- (a) limit the number of the

stage carriages or stage carriages of any specified types for which stage carriage permits may be granted in the region or in any specified area or

on any specified route within the region;

(b) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages.

8. Then follow regulations relating to the timings, load, number of passengers and the like. Section 57 prescribes the procedure to be followed in

the grant of permits; Section 59 for their cancellation or suspension. Section 64 provides for appeals to the Central Road Traffic Board against the

orders of the Regional Transport Authority specified therein. Then comes Section 64A which is in these terms :

The Provincial Government may, of its own motion or on application made to it, call for the records of any order passed or proceeding taken

under this Chapter by any authority or officer subordinate to it for the purpose of satisfying itself as to the legality, regularity or propriety of such

order or proceeding and after examining such records, may pass such order in reference thereto as it thinks fit,

9. On these provisions several contentions have been urged on either side; they may broadly be classed under the following heads :

1: Is a citizen entitled to ply as a matter of right, transport vehicles for hire on public streets? The petitioners contend that he is entitled and that it is

a right protected by Article 19(1)(g). Mr. M. K. Nambiar for the respondents argues that it "is a privilege and not a right and it does not fall within

Article 19(1)(g).

2. If it falls under Article 19(1)(g) are Ss. 42, 43A, 47, 48(a) and (b) and Section 64A void as inconsistent with the rights declared under that

Article? Are they protected by Article 19(6)? Are the above sections or any of them repugnant to Article 14 of the Constitution as denying equal

protection?

3. What is the extent of the jurisdiction of the Courts to review the order of the authorities constituted under the Act?

4. Are the provisions of the Act obnoxious to Article 301 which declares that commerce and trade within the territory of India shall be free?

10. (1) It is contended by Mr. Nambiar that a citizen has no right to ply transport vehicles on public pathways as a matter of right, that it is a mere

privilege and that, therefore, it is not protected by Article 19(1)(g). The arguments in favour of this position may be summarised as follows:

11. The pathways belong to the State. The only right which the public has over them is to pass and re-pass. Subject to this right the State, as the

owner of the pathways has a right to control it in such a manner as it chooses. The citizens cannot, therefore, claim as a matter of right that they are

entitled to carry on business on the roads and streets and use them for earning profit; and that if the State permits the streets to be used for the

purpose of business it is a privilege and not a right. It is also contended that a citizen has- no right to carry on any and every trade, that the business

of motor transport is a public utility service over which the State has paramount powers of control, that it is for the Legislature to determine the

conditions under which the business could be carried on and that its decision is final in respect of those matters. These contentions are sought to be

supported largely by citation of American authorities.

12. Mr. Venkatasubramania Aiyar, however, argues that the American law relating to business differs widely from the law as laid down in the

Constitution; that the right to carry on business is not one of the freedoms expressly protected by the American Constitution; that it was only by a

process of judicial construction that it has come to be recognised as comprised in the liberty guaranteed under the 14th amendment, that in

American law distinctions were made between trades which could be carried on as a matter of right and trades which could be carried on only

with the permission of the Government and between trades which were private and trades which were affected with public interest and that the

decisions of the American Courts could not, therefore, be accepted as safe guides for interpreting the rights of the parties under the Constitution.

13. The right to carry on a trade or calling or profession is not one of the freedoms expressly guaranteed by the American Constitution. So far as

the States were concerned, there was no constitutional limitation on their power to enact legislation with reference to business so long as it did not

encroach on the powers of the Congress to legislate or inter-state commerce and so long as freedom of contract was not violated. ""Business"" apart

from ""contract"" was not, as such, a freedom protected by the Constitution. In 1868 the 14th Amendment was promulgated, it provided "inter alia"

Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the

equal protection of the laws.

Even under this amendment freedom to carry on business was not expressly mentioned. In 1873 when the butchers of New Orleans challenged a

State law which granted a monopoly of that business to a corporation, as unconstitutional, no contention was urged on their behalf that the right to

carry on business was one of the freedoms included in the word ""Liberty"" in the 14th amendment.

It was Bradley J. who observed in his dissenting judgment as follows: ""For the preservation, exercise and enjoyment of these rights the individual

citizen, as a necessity, must be left free to adopt such calling, profession or trade as may seem to him most conducive to that end. Without this right

he cannot be a free man. This right to choose one's calling is an essential part of that liberty which it is the object of Government to protect; and a

calling, when chosen, is a man's property and right. Liberty and property are not protected where these rights are arbitrarily assailed,"" and again

In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously

adopted, does deprive them of liberty as well as property, without due process of law. Their right of choice is a portion of their liberty; their

occupation is their property.

Vide "Slaughter-house cases", (1873) 21. Law Ed 394. It will be noticed that

even in these passages there is no clear conception of a right to carry on a trade as a freedom distinct from the right to hold property.

The view that liberty in the 14th Amendment comprised also freedom to carry on business was stated by Field J. in -- "Munn v. People of Illinois", (1877) 24 Law Ed 77, in the following words:

By the term "liberty" as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment.

The same view was expressed in -- "Butchers Union v. Crescent City Co.", (1884) 28 Law Ed 585 and -- "Powell v. Pennsylvania", (1888) 32

Law Ed 253. In -- "Allgeyer v. State of Louisiana", (1897) 41 Law Ed 832, dealing with the right of citizen to carry on insurance business the

Court observed as follows :

The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

Thus the right to carry on business came to be recognised as one of the liberties protected by the Constitution but even so it did not acquire the full status of the freedoms which had been expressly mentioned in the Constitution such as the freedom of speech, of person and of religion; and was viewed somewhat in the light of an inter-loper or parvenu among them. Thus in -- "Tyson & Brother v. Banton", (1927) 71 Law Ed 718, where the question was about the powers of the Legislature to control the business of selling theatre tickets, Holmes J. in a dissenting judgment observed

as follows: ""I think the proper course is to recognise that a State Legislature can do whatever it sees fit to do unless it is restrained by some express

prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their

obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain."" Thus the freedoms expressly

mentioned in the Constitution occupied an exalted position which was denied to the unexpressed freedoms such as the one to carry on business.

Under the Indian Constitution the right to carry on business is one of the freedoms expressly protected under Article 19(1)(g) and it is placed on

the same footing as freedom of speech and as liberty of the person. It is accordingly contended, with considerable force, that the decisions of the

American Courts and the observations contained therein should be used with reserve in determining the rights of the parties under the Constitution.

14. Then again under the American law, the doctrine is well established that while some trades could be carried on by the citizens as a matter of

common law right there are others which could be carried on only if the State permits. This is called a franchise or a privilege and it has an English

origin. Under that law a franchise means a grant made by the Sovereign in exercise of the Royal prerogative, which is thus defined in Halsbury's

Laws of England, Vol. 6, p. 443, para 511:

The Royal prerogative may be defined as being that pre-eminence which the Sovereign enjoys over and above all other persons by virtue of the

common law, but out of its ordinary course, in right of his regal dignity, and comprehends all the special dignities, liberties, privileges, powers, and

royalties allowed by the common law to the Crown of England

At page 444 in para 513 it is stated: ""Prerogatives, however, connected with the royal revenues, such as treasure trove, waifs, estrays, and the

like, may be granted out in the form of franchises in certain cases,"" and with reference to the grants of franchise the law is thus stated at p. 580 para

740 :

Certain franchises, whilst they remain in the hands of the Crown form, part of the royal prerogative and do not exist as franchises until they have

been granted out as such to the subject. Such are royal mines, waifs, wrecks, estrays, treasure troves, fines and forfeitures, royal fish and swans.

These may be validly granted as franchises, notwithstanding the general rule which prevents the Crown, from parting with its prerogatives;

and again

Other franchises again, may be granted not out of but by virtue of the prerogative; but until so granted they have no legal existence. Instances are

markets and fairs, ferries, free fisheries, free chases, parks and warrens, pontage and murage, corporations, counties, palatine, counties, corporate

and the cinque ports.

Blackstone defines "Franchise" as "royal privilege or branch of the King's prerogative subsisting in the hands of a subject". (Blackstone 2 com. p.

37). The conception of a franchise is, therefore, bound up with that of the prerogatives of the Crown of England as recognised by the common law

and by its very nature it can have no place either in Republican America or in India. But as a survival of the pre-independent days when the Crown

of England had granted franchises in the American colonies the word "franchise" continued to live on in the legal world in America but with an

altered complexion. In the -- "Charles River Bridge v. The Warren Bridge Et. Al", (1837) 9 Law Ed 773, the facts were that there was a

legislative grant of the right to construct a bridge and collect tolls. Subsequently under a later legislation similar rights were conferred on a new

company and the question arose whether this legislation was valid". The court held that the grant of exclusive rights to the first company was in the

nature of a franchise and adopting rules of construction applicable to franchises, it held that the second legislation was valid.

Storey J. dissented from, this view and observed as follows :

An attempt has, however, been made to put the case of legislative grants upon the same footing as royal grants, as to their construction, upon

some supposed analogy between royal grants and legislative grants. Under our Republican forms of Government such a claim in favour of

Republican prerogative is new and no authority has been cited which supports it. Our legislatures neither have nor affect to have any royal

prerogatives", & again "the policy of the common law. which gave the Crown so many exclusive privileges and extraordinary claims, different from

those of the subject, was founded in a good measure if not altogether upon the divine right of Kings, or at least upon a sense of their exalted dignity

and pre-eminence over all subjects and upon the notion that they are entitled to peculiar favour for the protection of their kingly rights and office.

Parliamentary grants never enjoyed any such privileges.

But the view of the majority that monopoly rights conferred by statutes might be treated as in the nature of franchises came to be adopted as part

of the American jurisprudence.

Thus in -- "New Orleans Gas Light Co. v. Louisiana Light and Heat Producing and Mfg. Co.", (1885) 29 Law Ed 51(i), it was observed as

follows :

The right to operate gas works and to illuminate a city, is not an ancient or usual occupation of citizens generally. No one has the right to dig up

the streets and carry on. the business of lighting the streets and the houses of the city of New Orleans without the special authority from the

Sovereign. It is a franchise belonging to the State and in the exercise of police power the State could carry on the business itself or select one or

several agents to do so.

Again in -- "New Orleans Water Works Co. v. Rivers", (1885) 29 Law Ed 525, the Court observed :

The restriction imposed by the contract upon the use by others than plaintiff of the public-streets and ways, for such purposes is not one of which

the appellate can complain. He was not thereby restrained of any freedom, of liberty he had before;

In -- "California v. Central Pacific R. Co", (1888) 32 Law Ed 150 Bradley J. explains the connotation of the word ""franchise"" in the following

terms: ""What is a franchise?.....Under the English law Blackstone defines it as "a royal privilege, or branch of the King's prerogative subsisting in

the hands of a subject". Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions,

a franchise is a right, privilege or power, of public concern, which ought not to be exercised by private individuals at their mere will and pleasure

but should be reserved for public control and administration either by the Government directly or by public agents acting under such conditions and

regulations as the Government may impose as the public interest and for the public security. No private person can establish a public highway, or a

public ferry or railroad, or charge tolls for the use of the same without authority

from the Legislature direct or derived. These are franchises." In --

"Frost v. Corporation Commission of the State of Oklahoma", (1929) 73 Law; Ed 483, the question arose whether a corporation to which a

monopolistic right to carry on business in a ginning factory was granted by a statute of Oklahoma had a right to restrain others from carrying on the

same business. In holding that it was a franchise and that the corporation had a right to exclude others, Sutherland J. observed as follows :

It follows that the right to operate a gin and to collect tolls therefor, as provided by the Oklahoma statute is not a mere license, but a franchise,

granted by the State in consideration of the performance of a public service; and as such constitutes a property right within the protection of the

14th amendment." After quoting the observations in -- "California v. Central Pacific R. Co.", (1888) 32 Law Ed 150, extracted above, he went on

to observe : "And these are but illustrations of a more comprehensive list, from which it is difficult, upon any conceivable ground to exclude a

cotton gin declared by statute to be a public utility engaged in a public business the operation of which is precluded without a permit from a State

Governmental agency, and which is subject to the same authority as that exercised over transportation and transmission companies in respect of

rates, charges and regulations. Under these conditions to engage in the business is not a matter of common right but a privilege, the exercise of

which, except in virtue of a public grant, would be in derogation of the State's power. Such a privilege, by every legitimate test, is a franchise.

Brandies J. dissented from the decision but on the meaning of the word "franchise" he expressed himself in similar terms. He stated:

It must also be borne in mind that a franchise to operate a public utility is not, like the general right to engage in a lawful business, part of the liberty

of the citizen; that it is a special privilege which does not belong to citizens generally; that the State may, in the exercise of its police power, make

that a franchise or special privilege which as common law was a business open to all; that a special privilege is conferred by the State upon

selected persons; that it is of the essence of a special privilege that the franchise may be granted or withheld at the pleasure of the State; that it may

be granted to corporations only thus excluding all individuals; and that Federal Constitution imposes no limits upon the State's discretion in this

respect.

15. These authorities show that under the American law the State Legislatures possess the power to grant monopoly rights in respect of any

business treating it as franchise; that while in England that power is limited by the prerogatives of the Crown as determined by the common law, it

extends in America to whatever matter is declared by the Legislature to be proper subject of monopoly; that the right of a citizen to carry on trade

is subject to the paramount authority of the Legislature to take it out of his hands and make it a monopoly and that he has no such fundamental

rights in respect of business as can be set up in opposition to a franchise which may be granted by State legislation. In India there could be no

franchise in the English sense. The American concept of a franchise is a development peculiar to that jurisprudence and that has not been adopted

in the Indian Constitution. Article 19(1)(g) does not make any distinction between common law trades which could be carried on by all persons

and prerogative trades which could be carried on only under State grants. The right of a citizen to carry on any trade is subject only to the

restrictions such as would fall within the scope of Article 19(6). Even the legislatures have no power to curtail or abridge that right except to the

extent provided in Article 19(6). By the First Amendment to the Constitution it is provided that "nothing in Article 19(1)(g) shall affect the

operation of any existing law in so far as it relates to, or prevent the State from making any law relating to (ii) the carrying on by the State, or by a

corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens

or otherwise." This is a recognition that except to the extent provided in this amendment the legislature has no power to create a monopoly or to

take away the right of a citizen to carry on any trade. In this respect the law under the Constitution is fundamentally different from that laid down in

the American decisions.

16. Allied to this distinction between trades which could be carried on by all and businesses which could be carried on only under State

authorisation, and often mixed up with " it, is another distinction which has considerably affected the course of American law relating to business.

Under that law businesses are classified as those which are "private" and those

which are ""affected with public interest."" This distinction came to be made with reference to the power of the State to control business by legislation. It was held that while the Legislature had no power to control business which is private it had a paramount power to control business which was ""affected with public interest."" The reason for this distinction is that the power to control business is part of the police power of the State; such a power could be exercised only for reasons of public welfare and therefore it could be exercised only when the business is affected with public interest. In -- "Munn v. People of Illinois", (1877) 24 Law Ed 77, the State Legislature fixed the maximum rates which warehousemen could charge for storing grains. The validity of this Statute was attacked on the ground that the State had no right to interfere with the carrying on of business. It was held that the Legislature was competent to control any business which had become ""affected with public interest"". Waite C. J. observed as follows :

This brings us to inquire as to the principles upon which this power of regulation rests in order that we may determine what is within & what without its operative effect. Looking then to the common law from whence came the right, which the Constitution protects, we find that when private property is affected with a public interest, it ceases to be "juris private only". This was said by Lord Chief Justice Hale more than two hundred years ago in his treatise "De Portibus Maris, Harg. L. T. R. 78 (sic), and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest) he in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.

17. The correctness of the application of the observations of Lord Chief Justice Hale to business is open to question. Field J. in his dissenting judgment in that case pointed out that the passage in Lord Hale's treatise referred to property which was held in public ownership or which had been dedicated to the public and that business even regarded as property could

in no sense be said to be dedicated to the public: vide his observations at pages 92 and 93. But the doctrine propounded in that case that business might, when affected with public interest, become a legitimate subject of legislative control imposed in exercise of police power became an accepted principle of American jurisprudence. After that" decision whenever any dispute arose as to the validity of a law relating to business the question came to be asked : ""Is it one affected with public interest or is it a private business?"" On a question of this kind there was naturally considerable room for difference of opinion and the law on the subject was in a vague and uncertain condition. Thus in -- "Lachener v. New York", (1905) 49 Law Ed 937, the business of bakery was held to be a private one. Banking business was held to be affected with public interest in -- "Noble State Bank v. Haskell (1911) 55 Law Ed 112 and so was insurance business in -- "German Alliance Ins. Co. v. Lewes", (1914) 58 Law Ed 1011. Employment agency business was at one time held to be private: vide -- "Adams v. Tanner", (1917) 61 Law Ed 1336 and -- "Ribnik v. Mcbride", (1928) 72 Law Ed 913. But the contrary view was upheld in -- "Olson v. Nebraska", (1941) 85 Law Ed 1305. The business of selling theatre tickets was held to be private in -- "Tyson & Brothers v. Banton", (1927) 71 Law Ed 718 and so was the business of sale of gasoline in -- "Lawrence v. St. Loussan Rancis R. Co.", (1929) 73 Law Ed 282.

In -- "New State Ice Co. v. Liabmann", (1932) 76 Law Ed 747, the question arose with reference to the business of selling ice. The majority of the Court held that (1) ""where the business was so charged with public use"" as to justify the State control then ""engagement in the business was a privilege to be exercised only in virtue of public grant and not a common law right to be exercised independently"" and the permit granted by the Government ""constituted a franchise"" and that (2) where a business was not so affected with public interest any control thereof by the State legislation would be unconstitutional & a violation of liberty under the 14th Amendment. In -- "Wolf Packing Co. v. Court of Industrial Relations", (1923) 67 Law Ed 1103, Taft C. J. classified businesses affected with public interest into three categories--those which were carried on under the authority of public grant of privileges; such as rail roads, common carrier and

public utility; certain occupations regarded as exceptional such as those of keepers of inn, cabs and grist mills; and businesses which though not public at their inception may be said to have become such by being devoted to public use. In -- "New State Ice Co. v. Leibmann", (1932) 76 Law Ed 747, Brandies J. remarked in his dissenting judgment that :

The notion of a distinct category of business affected with public interest employing property devoted to a public use rests upon historical error.

In -- "Nebbia v. New York". (1934) 73 Law Ed 940, the question arose whether a New York statute fixing the price at which milk should be

sold was valid. It was contended that that trade could not be said to be affected with public interest on any of the accepted principles & that the

legislation was, therefore, unconstitutional. In upholding the validity of the law the Court observed as follows:

It is clear that there is no closed class or category of businesses affected with public interest and the function of courts in the application of the 5th

and 14th amendments is to determine in each case whether the circumstances vindicate the challenged regulation as a reasonable exertion of

Governmental authority or condemn it as arbitrary or discriminatory. The phrase "affected with public interest can in the nature of things mean no

more than that an industry for adequate reason is subject to control for the public good.

18. The result of this decision was to abrogate the theory of a distinction between private trades and businesses affected with public interest which

had dominated the field of American law from the days of -- "Munn v. People of Illinois", (1877) 24 Law Ed 77, and to subject all trades without

difference to State control in the exercise of police powers. The law as laid down in -- "Nebbia v. New York", (1934) 78 Law Ed 940 is in

agreement with that enunciated in Arts. 19(1)(g) and 19(6) of the Constitution. In applying the older decisions of the American Courts and the (sic)

occurring therein it should not be forgotten that they represent different strata of thought which prevailed at different stages in the evolution of the

law and that some of them would now be considered obsolete even under that law.

19. Turning to the American decisions on the right of citizens to carry on transport business on public pathways, it will be observed that they

present the same features which have been noticed in decisions relating to the right to carry on business generally. Thus they lay down that carrying on of transport business on public roads is a franchise and not a common law right which could be claimed by all citizens, and a distinction is also made between contract carriers or private taximen whose business is held to be private and over which the State has no power to legislate except to the extent of licensing; and common carriers whose business is affected with public interest and over whom, therefore, the State has large powers of control. In -- "Packard v. Banton", (1924) 68 Law Ed 596, the law in question provided that operators of motor vehicles for hire should take out insurance policies to meet claims arising out of accidents. This legislation was held to be valid and justified by the police power of the State. That would be so even under Article 19(6) of the Constitution and therefore there is nothing in the decision itself which bears on the question now under consideration but there are certain observations in the judgment on which the respondents rely. Sutherland J. observed at page 1608: ""The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for purposes of gain is special and extraordinary and generally at least may be prohibited or conditioned as the legislature deems proper"" and again moreover a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by Government sufferance or permission. In the latter case the power to exclude altogether generally includes the lesser power to condition and may justify a degree of regulation not admissible in the former.

20. These observations were approved by Holmes J. in -- "Frost v. Railroad Commission", (1926) 70 Law Ed 1101. Again in --"Stephenson v. Binford". (1932) 77 Law Ed 288, Sutherland J. observed:

It is well established law that the highways of the State are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary which generally at least the Legislature may prohibit or condition as it sees fit and again after quoting certain observations from -- "Atkin v. Kansas", (1903) 48 Law Ed 148, he continued:

It may be said likewise that it belongs to the State as master in its own house to

prescribe the terms upon which persons will be permitted to contract in respect of the use of the public highways for purposes of gain.

Apart from considerations arising from State ownership of public streets which will be adverted to presently the views expressed in --"Packard v.

Banton", (1924) 63 Law Ed 596 and -- "Stephenson v. Binford", (1932) 77 Law Id 288 are based on the doctrine of franchise which for reasons

already given must be held to be inconsistent with the provisions of the Constitution.

21. The distinction between private business and business affected with public interest resulted in its application to this branch of law in a distinction

being made between the business of contract carriers and that of common carriers. The business of taxi owners of carrying passengers or goods

under particular contracts was held to be private and therefore, not subject to legislative control except to the extent of licensing regulation. Vide --

"Michigan Public Utilities Co. v. Duke", (1916) 60 Law Ed 445 (sic), -- "Frost" v. Railrad Commission", (1926) 70 Law Ed 1101 and --

"Smith v. Cahoon", (1931) 75 Law Ed 1264. In contrast to contract carriers stood common carriers who were under an obligation to carry all

passengers or goods and over whom the legislature had plenary powers of control. The question arose frequently in connection with laws which

required that a certificate of public convenience and necessity should be obtained before vehicles could be put on public roads. Such requirements

were held to be valid with reference to common carriers. Vide -- "Bradley v. Public Utilities Co.", (1933) 77 Law Ed 1053, and --Stanley v.

Public Utilities Commission", (1935) 79 Law Ed 1311. But in respect of a contract carrier it was held in -- "Smith v. Cohoon", (1931) 75 Law Ed

1264, that such regulations were unconstitutional as amounting to a prohibition of a constitutionally protected right. Under the Constitution of India

both the contract carriers and common carriers would stand in the same position; both of them will have a right to carry on the business under

Article 19(1)(g) and both of them are liable to be controlled by appropriate regulations under Article 19(6).

22. It is now necessary to examine the contentions of Mr. M. K. Nambiar that as the public pathways vest in the State and as the only rights of the

citizens over them are to pass and re-pass, the State as their owner has a right

to control their use in such manner as they decide and that no citizen can claim a right to carry on business there except to the extent that the Government might permit. He relied on the following passage in Halsbury's

Laws of England, Vol. 16, page 238 and paragraph 288 :

The right of the public is a right "to pass and re-pass along" a highway for the purpose of legitimate travel, "not to be on it", except so far as their presence is attributable to a reasonable and proper user of the Highway as such. A person who is found using the highway for other purposes must be presumed to have gone there for such purposes and not with a legitimate object; and as against the owner of the soil he is to be treated as trespasser.

In England the rights of citizens to use public pathways have their origin in Feudal times when extensive estates were held in fee simple by Lords of the Manors. Highways connecting towns lay to a large extent through these estates and citizens had necessarily to pass through them in going from town to town. If a way lead to a market and were a way for all travellers and did communicate with a great road, etc., it is a "highway" --

"Austin's case", 1 Ves. 189.

The common definition of a highway that is given in the text books of authority is that it is a way leading from one market town or inhabited place

to another inhabited place which is common to all the Queen's subjects

(per Lord Coleridge L. J. in -- "Bailey v. Jemieson", (1876) 1 C . P. D. 329.

In such a case the law inferred a dedication of the pathway by the owners for user by the public but the extent of this user was limited to passing

and re-passing on the road. "The property is in the owner of the soil subject to an easement for the benefit of the public" (per Heath J. in --

"Dovaston v. Payne", 2 H B L 527). Lord Cairns considered that the right of the public was not in the nature of an easement but that it was "a

dedication to the public of the occupation of the surface of the land for all purposes of passing and re-passing". "Rangeley v. Midland Rly. Co.",

(1867) L. R. 3 Ch. 306. But whatever view be taken of the rights of the public they were limited to passing and re-passing and any excessive user

was held to constitute trespass on the property rights of the person who owned the lands on either side of the road.

If a man uses a land over which there is a right of way for any purpose lawful or unlawful other than that of passing and re-passing he is a trespasser.

So observed Crompton J. in -- "R. v. Pratt", (1855) 4 El & Bl 860.

In -- "Harrison v. Duke of Butland", (1893) 1 Q B 142, Lopes L. J. observed;

If a person uses the soil of the highway for any purposes other than that in respect of which the dedication was made and easement acquired, he is

a trespasser. The easement acquired by the public is a right to pass and re-pass at their pleasure for purposes of legitimate travel and the use of the

soil for any other purpose, whether lawful or unlawful is an infringement of the rights of the owner of the soil who has subject to this easement

precisely the same state in the soil as he had previously to any easement being acquired by the public.

Vide also -- "Hiekman v. Maisey", (1900) 1-Q.B. 752. Reliance was also placed on the decision in -- "Abingdon Rural Council v. City of Oxford

Electric Tramways (1917) 2 K. B. 318 for the position that the user of the public streets by motor omnibuses on country roads was an

extraordinary traffic.

23. In answer to this contention, the learned advocates for the petitioners quoted the following passage from Halsbury's Laws of England, Vol. 16

p. 185 paragraph 214:

A right of passage once acquired will extend to more modern forms of traffic reasonably similar to those for which highways were originally

dedicated, so long as they do not impose a substantially greater burden on the owner of the soil nor substantially inconvenience persons exercising

the right of passage in the manner originally contemplated.

It is argued that as the public pathways were being used in this country for travel by jutkas and stage coaches from time out of mind it would be a

legitimate user to travel by stage carriages over them. But there is an even more complete answer to this contention of the respondents. The law of

England with reference to rights of the public to use highways is based on a theory which was never part of the law of this country. As already

mentioned the highways in England lay to a large extent through private estates and a right by the public to use them was based on an inference that

the owner had dedicated them to public user; the extent of the dedication was determined by the user & subject to such dedication the pathways

continued to be the private property of the owner. This theory, therefore, has a feudalistic origin and has a historical background which is peculiar

to England. In this country the Crown has always been the owner of all highways; which were referred to as "Raja margas". The common law of

this country did not recognise the doctrine well established in Great Britain that

the soil of public highways is presumed to be in the conterminous proprietors and that if a public highway is established by usage over the land of

another the soil is still his with all his former lights subject to the public servitude which he has suffered to be established"" per Lord Campbell in --

"Gelbraith v. Armour", 4 Bells App. 374. It was never the common law of India that a citizen owned any public highways in private ownership

subject to a right in the public in the nature of easements or a right of occupation of surface. The pathways vested solely in the Crown and

restrictions on the rights of the public to use them based on the theory of private ownership of the soil in the streets would be foreign to Indian

jurisprudence. In -- "Municipal Commissioners of Madras v. Sarangapani Mudaliar", 19 Mad 154, a Bench of this Court observed as follows :

The English maxim once a highway always a highway" is based on the theory that the property in a highway is in the owner of the soil subject to

an easement in favour of the public. In the case before us this legal fiction peculiar to English law cannot arise for there is no question of any

easement whatever. The street it self and the soil thereof is vested in the municipality in trust for the public so that there is no question of dominant

or servient heritage.

It is true that Bhashyam Aiyangar J. expressed a dissent from these observations: vide -- "Sundaram Ayyar v. Municipal Council, Madura", 25

Mad 635. But the question there was with reference to the rights of the Municipality over streets which had vested in it under the Madras District

Municipalities Act and not with reference to the rights of the Government as against a citizen. Indeed the decision was that the vesting under the

Act was only of certain rights over streets "qua" streets and not of the soil which continued to be vested in the Government. In -- "Baswaswari

Swami v. Bellary Municipal Council", AIR 1916 Mad 613, Sadasiva Aiyar J.. after

referring to the differing views expressed in --"Municipal

Commissioners v, Sarangapani Mudaliar", 19 Mad 154 and --"Sundaram Ayyar v. Municipal Council of Madura", 25 Mad 635, observed as

follows:

With greatest deference I might be permitted to express some regret that the complications known to English law were thus introduced into this

presidency through this judgment of Bhashyam Aiyangar J. The result has been, as pointed out by that very learned Judge himself that there sprang

up a sort of divided ownership between the municipal council and the Secretary of State.

There has been considerable discussion in the Indian Courts as to the extent of the rights which a Municipality has when the streets are vested in it

under statutes like the District Municipalities Act but no doubt was ever expressed on the extent of the rights of the Government itself over the

streets. Two decisions which at first sight might seem to strike a different note, may be noticed. In -- "Nihalchand v. Azmat AH Khan", 7 All 362,

a certain municipality took over lands in Zamindari for forming a road and subsequently abandoned a portion of it. The question arose whether the

zamindars could lay claim to this portion. In holding they were entitled to it the Court observed :

Land was either highway or waste land adjoining it & there is a presumption that such land belongs to the owners of the soil of the adjoining land.

Here the land out of which the road was formed was not property which had vested in the Crown but private property belonging to Zamindars. In

-- Nawab Sardar Narharsingji Ishvarsingji Vs. The Secretary of State For India, , the above observations in -- "Nihalchand v. Azmat AH Khan",

7 All 362, were quoted and it was held that the road must be presumed to belong to the adjoining proprietors but that again was a case of an

estate which had been settled on the representatives of a Royal House under a sannad. The entire estate belonged to the Sannadholder.

24. The true position then is that all public streets and roads vest in the State but that the State holds them as trustee on behalf of the public. The

members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by

every other citizen to use the pathways. The State as trustees on behalf of the

public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally. Thus the nature of the road may be such that it may not be suitable for heavy traffic and it will be within the competence of the Legislature to limit the use of the streets to vehicles which do not exceed specified size or weight. Such regulations have been held to be valid as within the police power of the State in America. Vide -- "Morris v. Doby".

(1927) 71 Law Ed. 966, --"Sproles v. Binford", (1932) 76 Law Ed 1167, and -- "South Carolina State v. Barnwell Bros.", (1938) 82 Law Ed

734. For the same reason the State might even prohibit the running of transport buses and lorries on particular streets or roads if such running

would interfere with the rights of pedestrians to pass and re-pass as it might if the street is narrow or contested but subject to such limitations the

right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the

highways.

25. Mr. M. K. Nambiar also relied on the following observations of Horwill J. in -- President, District Board Vs. Koneru Lakshmayya, .

I doubt whether at any time motor vehicle has had a unrestricted common law right to use the highway. However, assuming that such a right did

at one time exist or must be presumed to have existed from the mere fact that motor bus is a vehicle that runs along roads, it seems clear to me that

that right was taken away by the Local Boards Act.

These observations do not negative the existence of the right to ply buses but suggest that it is liable to be controlled. The decision in -- "Abington

Rural Council v. City of Oxford Electric Tramways Ltd.", (1917) 2KB 318, was one on a special statute and does not lay down any principle of

general application. In-- Amba Prasad Maheshwari Vs. Jugal Kishore, , it was held that the right of the public to pass and re-pass along public

highways included the right to ply lorries for hire. This decision is also an authority against the contention of the respondents that the citizen has no

right to use public pathways for purposes of gain. There are observations in the American Courts in support of the view that citizens have no right

to use public pathways for purpose of gain, but then contract carriers were also using public pathways for purposes of gain and it was held in --

"Atkin v. Cansas", (1931) 75 Law Ed 1264 (sic) that they were entitled to carry on trade without being compellable to take out a certificate of

public convenience and necessity as a condition of carrying on the business.

In -- Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, , one of the questions discussed by the Full Bench was

whether members of the public had a right to ply passenger buses on public roads., The opinion was expressed that such a right was within Article

19(1)(g) and subject to the limitations in Article 19(6). vide paras. 55, 56, 98, 177 and 367. In -- Lokanath Misra Vs. State of Orissa and

Another, . it was held by a Bench of the Orissa High Court that nlving of motor vehicles for hire on public roads is a business within the meaning of

Article 19(1)(e), vide para. 8 of the judgment. An important decision bearing en this question is the one reported in--"Rashid Ahmed v. Municipal

Board. Kairana", 1950 SCJ 324. There the Supreme Court held that the refusal by a Municipality to grant a licence to a citizen to carry on the

businesses a wholesale vegetable merchant in a market, a monopoly in that business having been already granted to another, was an infringement of

his right to carry on trade under Article 19(1)(g) and that it was not saved by Article 19(c). There the business by its very nature could be carried

on only in a public place and it was to be carried on for gain, as indeed all businesses must be. The right of a citizen to carry on business in motor

transport on public streets cannot in law be different from his right to sell vegetables in a public market and on the principle of the decision in --

"Rashid Ahmed v. Municipal "Board of Kairana". 1950 SCJ 324, it must be held to be equally within the protection of Article 19(1)(g).

26. (2) The above conclusion leads on to a consideration of the second group of questions. If the petitioners have a right to carry on business in

motor transport on public pathways and that is a right guaranteed under Article 19(1)(g) then the validity oĩ½ the impugned sections of the Motor

Vehicles Act must be determined with reference to the requirements of Article 19(6). They will be valid only if they are reasonable restrictions

imposed in the interests of the public

27. Section 42 is attacked on the ground that it prohibits the carrying on of the business unless a permit is obtained. It is argued that the exercise of

a fundamental right cannot be made to depend upon the discretion of an

administrative authority; nor could previous restraint be imposed on it.

Reliance is placed on -- "Lovell v. Griffin", (1938) 82 Law Ed 949 and -- "Hague v. Committee for Industrial Organisation", (1939) 83 Law Ed

1423 and --"Schneider v. Irvington", (1933) 84 Law Ed 155 and -- "Largent v. Texas", (1943) 87 Law Ed 873. In -- S. Ramakrishnaiah Vs.

The President, District Board, Nellore and Others, , this Court referring to the above decisions observed as follows:

It is well established that the exercise of any of the- fundamental rights like the right of free speech, right of freedom of religion or right of freedom

of association cannot be made subject to the discretionary control of an administrative or executive authority which can grant or withhold

permission to exercise such right at its discretion. It is equally well established that there cannot be any restriction on the exercise of such a right

which consists in a previous restraint on such exercise and which is in the nature of administrative censorship.

The question then is whether Section 42 is bad as offending the above principles? It is necessary in this connection to bear in mind the distinction

between permit and licence. The law might confer on an administrative authority an absolute discretion to grant or withhold permits for carrying on

business or it may empower it to Issue licence to the applicants imposing appropriate conditions for the conduct of business. The word ""permit

may appropriately be used for the former and the word ""licence"" for the latter. While it is well established that a permit system is unconstitutional in

so far as it relates to the exercise of fundamental rights, it is equally well settled that a system of licensing which has for its object the regulation of

trades is not repugnant to Article 19(1)(g). Such regulations have been sustained in America as a proper exercise of the police power and under

the Constitution they will be upheld as falling within the scope of Article 19(6).

28. Bearing in mind these principles it is necessary to examine the relevant provisions of the Act for determining whether what is prescribed is a

permit or is a licence. Section 47 enacts provisions by which the Regional Transport Authority has to be guided in the grant of permits. Section 59

provides that reasons are to be given in case of refusal. u/s 60 there is an appeal against the decision of the Regional Transport Authority to the

Central Road Traffic Board. Thus the proceedings are judicial in character. No

arbitrary power is conferred on the executive authority to grant or refuse permit at its own discretion. It is, therefore, in substance not a permit but a licence. Nor is there any force in the contention that Section 42 imposes previous restraint on the exercise of a Constitutional right and is, therefore, invalid. As observed in the decision in -- "Ananthakrishna v. State of Madras", 65 M. L. W. 114, the theory of previous restraint which was evolved with - reference to freedom of person and freedom of speech cannot operate with the same force with reference to the freedom of trade or profession and that reasonable conditions forming part of licensing regulations cannot be held to be repugnant to Article 19(1)(g). Vide pages 130 and 131. Section 42 must accordingly be held to be valid.

29. Coming next to Section 43-A, it is argued that it confers on the provincial Governments wide and unlimited powers to issue all such orders and directions of a general character as it may consider necessary, that the transport authorities are bound under that section to give effect to such orders and directions; that there is nothing to prevent the Government from even issuing directions with reference to the judicial functions which those authorities have to discharge under the Act; that it could not be expected that such directions would be disregarded by those authorities & that in practice the provisions of Section 47 could be evaded. Reference is also made to the fact that this section was introduced for nullifying the effect of the decision in -- Sri Rama Vilas Service, Limited Vs. The Road Traffic Board, , where it was held that the transport authorities had failed in the discharge of their judicial function in meekly giving effect to an order of the Government which was opposed to the provisions of the Act.

Section 43A appears to be intended to clothe the Government with authority to issue directions of an administrative character and in that view it would be valid. No specific order or direction of the Government is attacked in these proceedings as invalid and the discussion is largely academic.

The section must itself be held to be valid though particular orders passed thereunder might be open to challenge as unconstitutional.

30. Sections 47 (1) and 43 (a) and 48 (b): These sections are among the most important in the Motor Vehicles Act. They provide (1) that the Regional Transport Authority should, before granting or refusing a permit, have regard to the several matters mentioned in Section 47 (1), (2) that

it should fix the number of vehicles to be put on the road (48) (a) and (3) grant the permit to a particular stage carriage (48) (b). Many of these

provisions have come in for considerable criticism and before dealing with the sections clause by clause it will be convenient to consider on

principle the questions in dispute. (1) Can the Transport authorities take into account the condition of the road in granting or refusing the permit for

a stage carriage or limiting its number on a particular route? Conservation of roads is a matter of general public interest and they have to be well

maintained not merely for purposes of motor traffic but also for other vehicular traffic and to enable pedestrians to pass and repass safely and

comfortably and their maintenance involves considerable expenditure of public funds. A regulation of motor traffic with the object of conserving the

roads must be upheld as protected by Article 19(6). The following observations of Holmes J. in -- "Frost v. Railroad Commission", (1926) 70

Law Ed 1101 may in this connection be usefully quoted :

If a State speaking through its Legislature should think that in order to make its highways most useful, the business traffic upon them must be

controlled. I suppose that none would doubt that it constitutionally could, as I presume most states or cities do exercise some such control. The

only question is how far can it go. I see nothing to prevent its going to the point of requiring a licence and bringing the whole business under the

control of railroad commission so far as to determine the number, character and conduct of transportation companies and so to prevent the streets

from being made useless and dangerous by the number and lawlessness of those who seek to use them."" (2) Can the transport authorities take into

account the nature of the locality before deciding whether the use of transport vehicles could be permitted there? It is in the interests of the public

that where the streets are narrow or the locality is congested that there should be a restriction on the running of motor transport vehicles in that

area. In -- "Bradley v. Public Utilities Co.", (1933) 77 Law Ed 1053, a certificate of public convenience and necessity was refused on the ground

that the ""proposed service would create and amount to an excessive hazard to the safety and security of the travelling public and the property upon

such a highway.

In upholding the refusal as a proper exercise of police power Brandeis J.

observed at page 1056 :

The purpose of the denial was to promote safety and the test employed was congestion of the highway.

That would also be the position under Article 19(6).

31. (3) Can the transport authorities take into account the adequacy of the existing services? Can they say that there is no need for extending the

existing services? In America the Statutes provide for a certificate of public necessity and convenience being obtained before permits are issued.

But under Article 19(6) the only relevant consideration would be whether the grant is in the interests of the public. It will not be a proper ground to

refuse a permit on the ground that there is no need for extension of service. Mr. K. V. Ven-katasubramania Iyer the learned advocate for the

petitioners cited a number of American authorities in which it was held that while transport authorities might properly refuse to grant permits on

account of the condition of the roads they may not do so merely on the ground that existing service is adequate and competition would be

uneconomic. In -- "Buck v. Kay Kendall", (1925) 69 Law Ed 623. a certificate of public necessity and convenience was refused on the ground

that the locality was "already being adequately served by the holder of a certificate". In holding that the refusal to issue a certificate on this ground

was unconstitutional, Brandies J. distinguished the cases in which it had been refused on the ground of conservation of roads and observed:

The provision here in question is of a different character. Its primary purpose is not a regulation with a view to safety or conservation of highways

but the prohibition of competition. It determines not the manner of the use but the persons by whom the highways may be used.

In -- "Bush and Sons v. Maloi", (1925) 69 Law Ed 627, it was held that the refusal of a certificate on the ground that the existing lines of

transportation would be prejudiced was improper as its object was not the protection of highways but the protection of persons engaged in

business. In -- "Frost v. Railroad Commission", (1926) 70 Law Ed 1101 this distinction was again emphasised, Sutherland J. observed as follows

:

It is very clear that the Act as thus applied is in no real sense a regulation of the use of the public highways. It is a regulation of the business of

those who are engaged in using them. Its primary purpose evidently is to protect the business of those who are common carriers, in fact by

controlling competitive conditions. Protection or conservation of the highways is not involved.

It may be said with reference to this class of cases that they are decisions on the commerce clause and that what was decided was that inter-state

commerce .as distinguished from regulation of highways was not within the legislative competence of the State but the principles enunciated therein

are in accordance with the law as enacted in Article 19(6). Under that provision what has to be decided is whether the grant is for the benefit of

the public and not whether it is injurious to the interests of the existing operators.

32. (4) Can transport authorities take into consideration that the existing operators are running other services which are not remunerative and can

they grant permits to them with a view to compensate them for those unremunerative services? This will be clearly opposed to Article 19(6) under

which the restriction imposed must be in the interests of the public and not in the interests of particular individuals.

33. (5) Is the power conferred by Section 48 (b) of the Motor Vehicles Act on the Regional Transport Authority to grant permit to a particular

stage carriage or particular service of stage carriage valid? Can the transport authorities refuse to grant permit altogether to any applicant? It is

argued that Article 19(6) is intended only to cover restrictions which are of a regulatory character but that a power to regulate does not carry with

it the power to prohibit and that refusal to grant permits is not a reasonable restriction on the exercise of the right to carry on trade taut an

unconstitutional denial, of it. Reliance was placed on the decision of the Supreme Court in -- Chin-taman Rao v. State of Madhya Pradesh", 1950

S C J 571, where a Statute prohibiting the use of labour for beedi business during agricultural seasons was held to be bad as not warranted by

Article 19(6). It was further argued that the effect of Section 48 (a) and (b) was to enable the Government to confer monopoly rights on one or

more persons to the exclusion of others and that such monopoly could not be sustained under Article 19(C). Reliance was placed on the decision

in -- "Rashid Ahmed v. Municipal Board, Kairana". 1950 SCJ 324, where a grant of monopoly right for carrying on business as wholesale

merchants was held to be an unreasonable restriction on the rights of other citizens to carry on business. Reference was also made to the

authorities under the commerce clause of the Australian Constitution wherein" it had been held that a power to regulate did not include the power

to prohibit and that the right of ""free"" trade u/s 92 was violated by laws conferring monopoly rights.

In -- "Milk Board v. Metropolitan Cream Pty. Ltd.", 62 CLR 116, Latham C. J. observed as follows :

One proposition which I regard as established is that simple legislative prohibition federal or state as distinct from regulation of inter-state trade

and commerce is invalid... Such a law does not regulate such trade, it merely prevents it." Vide also -- "Gratwick v. Johnson",) 70 CLR 1.

In -- "Australian National " Airways v. The Commonwealth", 71 C. L. R. 29, the learned Chief Justice further observed that the exclusion of

competition is not a system of regulation and is a violation of Section 92. These observations were quoted with approval by the Judicial Committee

in -- "Commonwealth of Australia v. Bank of New South Wales", (1950) AC 235. Vide also the observation of Lord Bavey in -- "Taranto

Municipal Corporation v. Virgo", (1896) AC 88.

34. The soundness of these contentions in general has not been disputed but it is argued that in judging of the reasonableness of restriction under

Article 19(6) regard must be had to the nature of the business, and the conditions prevailing in that trade; that these factors must differ from trade

to trade and no hard and fast rules capable of application to all trades can be laid down. It cannot be denied that the State has the power to

prohibit trades which are illegal or immoral or insurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous

goods, or gambling or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the busi-

ness is, therefore, an important element in deciding on the reasonableness of the restrictions. It has been already mentioned that while a citizen has

a right to carry on the business of motor transport on public pathways, the latter however are owned and held by the State as trustees on behalf of

the public; that the rights of a citizen to use the streets are limited by similar rights possessed by the other citizens and that it would be within the

power of the State as such trustees to limit the number of transports that could run on the road and to even totally prohibit its running.

Elimination and exclusion are inherent in the nature of this business and it would hardly be proper to apply to such a business principles applicable

to trades which all could carry. Nor can the provisions of the Act be attacked on the ground that they create a monopoly. Properly speaking there

can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the

general public. Such, however, is not the case with the business of the motor transport. Even with reference to trades in which it could properly be

said that there is a monopoly the following observations of Lord Porter in -- "Commonwealth of Australia v. Bank of New South Wales", (1950)

A. C. 235, may be quoted:

Yet about this as about every other proposition in this field a reservation must be made. For their Lordships do not intend to lay it down that in no

circumstances would exclusion of competition so as to create a monopoly either in a State or Commonwealth agency or in some other body be

justified. Every case must be judged on its own facts and in its own setting of time and circumstances and it may be that in regard to economic

activities and at some stage of special development it might be maintained that prohibition with a view to State monopoly was the only practical and

reasonable manner of regulation and that inter-state trade, commerce and intercourse thus prohibited and thus monopolised remained absolutely

free.

35. A more difficult question is, when the number of vehicles is limited u/s 48(a) and there are several applicants for the permit, how is the choice

to be made? The Act contains no provisions relating to this question. The provisions of Section 47(1) do not cover this aspect. It is argued that as

no criteria are laid down in the Act for making a selection among the numerous applicants the power to grant permits becomes arbitrary and vague

and is, therefore, void. Reliance is placed on the decision in -- "Yick v. Hopkins", (1886) 30 Law Ed 220, but as already mentioned under the Act

the transport authorities are acting judicially and not administratively in granting or refusing to grant permits. Section 47(1) mentions the matters by

which the transport authorities are to be guided in disposing of the applications;

Section 57(7) provides that the authority must give reasons in case of refusal and u/s 64 his order is appealable. In -- Sri Rama Vilas Service, Limited Vs. The Road Traffic Board, , these proceedings were held to be judicial and therefore, the provisions of the Act are not open to the objection which was upheld in -- "Yick v. Hopkins", (1336) 30 Law Ed.

220. The only consequence that results from the absence of criteria in .the Act itself is that the validity of every one of the orders will have to be determined on its own merits and on a consideration whether it satisfies the requirements of Article 19(6); that is to say, whether it is reasonable and made in the interests of the public.

36. It will be convenient at this stage to consider the objections of the petitioners based on Article 14. Their contention is that as there are no

criteria laid down in the Act for making a selection among the applicants, there is scope for arbitrary exercise of power and that it is, therefore,

repugnant to the provisions of Article 14 of the Constitution. A perusal of the several orders shows unmistakably that the transport authorities were

often guided to the interests of the public and that even when the grounds assigned for the grant or refusal of a permit were not personal, there was

no fixity in the principles adopted and no uniformity in their application. To take a question very much debated, is it a qualification for the grant of a

permit that the applicant holds a number of permits already or is it a disqualification? One view is that persons who run a number of buses will have

considerable experience and command convenience beyond the means of a single permit-holder such as owing a workshop for effecting repairs;

that they will be in a position to send substituted buses in case there is a breakdown of the stage carriage on the way. It is, therefore, contended

that from the point of view of the public good which should be the only guiding consideration, a fleet owner, as he has been called, should be

preferred to stray operators. On the other hand, it is contended that to adopt this principle would be hard on the new entrants and will tend to

create a monopoly which, it is argued, is not in the interests of the public. It is also argued that new entrants are likely to devote greater attention to

the work while the fleet owners might develop an attitude of indifference to the public need. This is typical of several other questions over which

conflicting views have been advanced, it being claimed by the adherent of each

view that its adoption would be in the best interests of the public.

The position with reference to this class of contentions is that it is for the State to decide on questions of policy as to which among the several

competing principles would serve best the interests of the public and when once a decision has been taken by the Government it is not the province

of the Court to go into the question of the comparative soundness of one point of view rather than the other. That is a matter on which the State is

entitled to come to its own conclusion and the jurisdiction of the court is limited to examining whether the view point adopted has relation to the

purpose which it is intended to serve and if it has, then the court would be loath to interfere with the principles actually adopted on the ground that

a different principle would be more advantageous. In -- "Railroad Commission v. Rowen an Nichols Oil Co.", (1940) 84 Law Ed 1368, dealing

with the limits of the Court's jurisdiction to interfere with the rules adopted by the State Commission Frankfurter J. observed as follows :

A controversy like this always calls for a fresh reminder that the Courts must not substitute their notions of expediency and fairness for those

which have guided the agencies to whom the formulation and execution of the policy have been entrusted.

The same principle was adopted in -- "Secretary of Agriculture v. Central Roig Refining Co.", (1950) 94 Law Ed 381, where the court declined

to interfere with the decisions of special tribunals based on well defined principles.

37. But whatever principles be adopted as criteria for making the selection among the applicants it is necessary that they should be applied

uniformly and without differentiation as if they had been enacted as part of the statute. This does not, however, prevent the State from altering its

rules from time to time when as a result of experience it discovers that they require to be altered in the interests of the public. But what is necessary

is that at any given time there must be one set of rules and regulations governing the disposal of all the applications. In W. P. No. 615 of 1951, it is

alleged in para 6(g) of the affidavit in support of the petition that while the rule against the fleet owners being granted permits was applied by the

Central Road Traffic Board against the petitioner in its order dated 10-8-1951 the self-same body adopted a different rule in respect of permit

granted on 7-8-1951 and a permit granted on 23-1-1951. This would be clearly

illegal and opposed to Article 14. There should not be two different and opposing principles both in operation at the same time, one being applied to one applicant and the other to the other.

38. Rules should be observed not "ad hoc" with reference to particular applicants but generally with reference to all applicants. There should be a Government of laws and not of men.

39. In the light of these discussions the validity of the provisions of Ss. 47(1) and 43 (a) and (b) can now be considered. In Section 47(1) Clauses

(a), (b), (d) and (f) are valid, as being in the interests of the public; and Clause (e) is invalid as being not in the interests of the public but of the

permit holder. With reference to Section 47 (1) (c) adequacy of extension of service can be taken into account only in so far as it is in the interests

of the public. The factor to be considered is not whether the existing operators will suffer by competition but whether extension of service will be in

the interests of the public. Therefore, Section 47(1)(c) will not be legal in so far as it provides that the effect of the service I proposed upon the

existing service should be "taken into account. .

40. Section 48(a). One contention that has been advanced with reference to this provision is that it is erroneous in principle to fix beforehand the

number of vehicles that can be put on a route. It is argued that the roads should in the first instance be laid open generally to bus traffic as an

experimental measure; that all persons who would run stage carriages should be free to do so and that as a result of experience the requisite

number should be determined. But, on the other hand, to fix the number beforehand on a consideration of the conditions of the road and the needs

of the public is less likely to be open to attack on the ground of unfairness or discrimination, and moreover it is not in the interests of the public that

there should be "lawlessness" on the roads even temporarily. Further the authorities have the power to revise at any time the number of vehicles

that could be permitted to run on the roads and the procedure prescribed by Section 48(a) must, therefore, be held to be in the interests of the

public. Section 48(b) must for the reasons already given be held to be valid.

41. Section 64A. It is this section that has come in for the largest criticism. This provision came in by an amendment made by the local legislature.

It confers revisional jurisdiction on the Provincial Government. The scops of the

jurisdiction extends to its satisfying itself as to the "legality, regularity or propriety" of the proceedings or order in question, and it can pass such orders "as it thinks fit". The contention of the petitioners is that these provisions taken along with the power conferred u/s 43A set up, in the words of Mr. K. V. Venkatasubramania Aiyar, a "Government dictatorship" which is wholly out of keeping with the character of a fundamental right. He argued that the Government had unlimited powers u/s 43A to issue directions to its subordinate officers; that u/s 64A it could set aside any order on the ground that it is not proper; that "propriety" as distinct from legality or regularity is vague and undefined; that as the statute contains no criteria for making the selection among the applicants it was possible for the Government to control the entire machinery through executive fiat in disregard of constitutional rights and that the authority to pass such order "as it thinks fit" leaves to the Government to decide on its own subjective satisfaction and that the rights guaranteed under Article 19(1) (g) would be rendered illusory.

42. It must be conceded that there is considerable force in this contention & that the fears expressed by the petitioners are not as would appear from the cases which have come before the Courts wholly fanciful. But the question now before us is whether Section 64A is unconstitutional as clothing the Government with a "naked and arbitrary power." We are not now concerned with the validity of any particular orders passed thereunder. The language of Section 64A is undoubtedly wide. But it should not be forgotten that it is a judicial power to review the orders of subordinate officers passed in judicial proceedings. The extent of the powers of those officers is sufficiently defined in the Act and it would be reasonable to construe the powers of the Government u/s 64A as subject to the same limitations as those subordinate authorities. Moreover judicial power, however wide, are not arbitrary. Courts of equity are entrusted with wide discretion in deciding matters within their jurisdiction but such discretion "is not arbitrary" but sound and reasonable guided by judicial principles and capable of correction by a Court of appeal.

Considerable argument was addressed to us on the significance of the word "propriety" used in Section 64A. It was contended that legality and regularity covered all possible judicial grounds for interference and the inclusion

of a third category ""propriety"" is in its vagueness and indefiniteness, interference on any grounds not even judicial. If that is the true scope of the word the criticism is well founded but in the context the word can only mean reasonableness.

"In *Re Beddoes*¹, (1893) 1 Ch 547, Bowen L. J. observed that expenses ""properly"" incurred means expenses incurred ""reasonably and

honestly"". In -- "*R. v. Minister of Transport*", (1934) 1 K.B. 277, it was held by the Court of Appeal that the wide powers conferred on the

minister u/s 81 of the Road Traffic Act must be construed as limited by the subject-matter of the appeal before him. In "*C. M. P. No. 5942 of*

1951 (Mad)" Subba Rao J. has put a similar construction on the scope of Section 64A. I am accordingly of opinion that the word ""propriety"" in

Section 64A must be understood as meaning ""reasonableness"". Some criticism was also levelled against the use of the words ""as it thinks fit". If

the authorities were given the power to come to a decision on their own subjective satisfaction it would be clearly illegal in so far as it related to

fundamental rights. But the words in the statute are ""as it thinks fit"" and these words cannot be equated with the words ""to its own satisfaction"". For

the above reasons it must be held that Section 64A is valid.

43. When once it is held that the right of a citizen to ply buses on public pathways is a business which is protected by Article 19(1)(g) then the only

question that arises for determination is whether the restrictions on that right could be supported under Article 19(6) on the ground that they are

reasonable and made in the interests of the public. In America it has been held in a series of cases that where a fundamental right of a citizen is

interfered with by legislation it is for the Courts to decide whether that legislation is valid as a proper exercise of the police power.

44. In -- "*McLean v. Arkansas*". (1909) 53 Law Ed 315, the Court observed as follows:

The police power of the State is not unlimited and is subject to judicial review and when exerted in an arbitrary or oppressive manner such

legislations may be annulled as violative of the rights protected by the Constitution.

In -- "*Meyer v. Nebraska*", (1923) 67 Law Ed 1042, McRynpids J. observed as follows:

The established doctrine is that this liberty may not be interfered with under the guise of protecting public interest by legislative action which is

arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the Legislature of what

constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the Courts.

On the same principle when a legislation which interferes with fundamental rights guaranteed under Part 3 of the Constitution is sought to be

sustained as falling within the scope of Article 19(6) the question whether it is reasonable and made in the interests of the public is one open to

judicial review. That was the view taken in -- "Chintamanrao v. State of Madhya Pradesh", 1950 S C J 571, wherein Mahajan J. observed:

The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive which is subject to the supervision by this

Court. In the matter of fundamental rights the Supreme Court watches and guards the rights guaranteed by the Constitution and in exercising its

functions it has the power to set aside any act of the Legislature if it is in violation of the freedoms guaranteed by the Constitution."" With particular

references to the provisions of the Motor Vehicles Act, the right of a citizen to ply buses may be abridged or taken away in two ways: by limiting

the number of vehicles which can be put on the route u/s 48 (a) and by excluding the applicants in making the selection u/s 48(b). It was argued for

the petitioners that even the decision of the Regional Transport Authority fixing the number of vehicles u/s 48(0) was liable to be reviewed by the

Courts. This must be conceded as every step in the restriction of a fundamental right must be a matter for judicial review, though actually it is

difficult to see how the Court is in a better position than the transport authority in coming to a correct decision on the question. The following

passages occurring in the judgment of Hughes C. J. in -- "St. Joseph Stock Yards Co. v. United States", (1936) 80 Law Ed 1033 may be usefully

quoted: ""The Court does not sit as a board of review to substitute. its judgment for that of the legislature or its agent as to matters within the

province of either, when the legislature appoints an agent to act within that sphere of legislative authority it may endow the agent with power to

make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met as

in according a fair hearing and acting upon the evidence and not arbitrarily. In such cases the judicial enquiry into facts goes no further than to

ascertain whether there is evidence to support the findings and the question of the weight of evidence in determining the issues of fact lies with the

legislative agency acting within its statutory authority.

The more important aspect of this restriction consists in the power of selection resulting in the exclusion of non-successful applicants." As to this, as

already observed, it is the duty of the Provincial Government to frame rules for selection solely in the interests of the public and the limits within

which Courts might interfere with such rules have been discussed; and the authorities are under a duty to apply such rules fairly and impartially; and

their orders are liable to be reviewed by Courts and set aside if they are unreasonable or arbitrary.

45. (4) A contention was raised that the restrictions imposed by the Motor Vehicles Act are repugnant to Article 301 which provides that trade,

commerce and intercourse throughout the territory of India shall be free. It is not disputed that commerce includes all forms of transportation and

motor traffic is within that section but Article 305 provides that nothing in Article 301 shall affect the provisions of any existing law, and that will

cover the Motor Vehicles Act. This objection must accordingly be overruled.

46. To sum up (1) the citizens have a right to ply motor vehicles on public pathways and that is a business which is protected by Article 19(1)(g).

Any infringement of that right can be justified only if it falls within the scope of Article 19(6). (3) Sections 42, 43A, Section 47(1) clauses (a), (b),

(d) and (f), Section 48(a) and (b) and Section 64A of the Motor Vehicles Act are valid. Section 47(1)(c) is in part valid and Section 47(1)(e) is

wholly void. (4) The grant or refusal of permits by the transport authorities in all its stages including Section 64-A is a judicial act. (5) The Provincial

Government should frame rules laying down the principles on which the selection from among the applicants is to be made and such rules must be,

as required by Article 19(6), reasonable and in the interests of the public. (6) The rules so laid down should be followed by all transport authorities

including the Government acting u/s 64A without any discrimination, (7) The decisions of the transport authorities granting or refusing to grant

permits are liable to be reviewed by the Courts and set aside if they are

unreasonable, arbitrary or discriminatory.

47. After this judgment had been prepared and when it was about to be delivered, the decision of the Supreme Court in -- "Veerappa Pillai v.

Raman & Hainan Ltd., Cr. A. 159 of 1951 on the file of the Supreme Court, was reported. As it appeared that some of the views expressed

herein might require re-consideration, in view of that decision the petitions were posted for further hearing and arguments have been addressed to

us by the learned counsel on both sides on the scope and effect of the decision of the Supreme Court, on the points which have now to be

determined.

48. The facts in -- "Veerappa Pillai v. Raman and Raman Ltd", Cri. A. 159 of 1951 (SC) are briefly these: One Balasubramania Pillai was the

owner of five buses with permits for running them on the route between Kumbakonam and Karaikal. Messrs. Raman and Raman Ltd. purchased

buses from Balasubramania Pillai and applied for transfer of the permits to them. On the application of one Veerappa Pillai proprietor of Sathi Vilas

Bus Service, the Transport Authorities suspended the permits in favour of Balasubramania Pillai and granted them to him. Then Veerappa Pillai

purchased the buses from. Balasubramania Pillai who had gone back on his transfer to Messrs. Raman and Raman Ltd., instituted a suit in the Sub

Court, Kumbakonam to establish his title to the buses and obtained decree. Against that decree Messrs. Raman and Raman Ltd, preferred an

appeal to the High Court. While these proceedings were pending Veerappa Pillai first obtained a temporary permit for the buses and on 18-4-

1949 the Transport Authorities granted permanent permits to him. On 2-9-1949 the High Court decided, in the appeal preferred by Messrs.

Raman & Raman Ltd., that they were entitled to the buses and that Veerappa Pillai had not validly acquired them. Then Veerappa Pillai applied on

14-10-1949 for renewal of the permanent permits which had been granted to him and that was granted on 5-1-1950 there having been no

objection to it. Messrs. Kaman and Raman Ltd. applied on 28-11-1949 to the Regional Transport Authority for withdrawal of the permits, which

had been granted on 18-4-1949 to G. Veerappa Pillai. On 19-1-1950 an order was passed cancelling the permits issued on 5-1-1950 to

Veerappa Pillai, declaring the route vacant and calling for fresh applications. The

Central Road Traffic Board set aside this order on 3-3-1950 and directed that the grant of permanent permits to Veerappa Pillai on 5-1-1950 should stand. A revision preferred u/s 64A to the Government was dismissed on 7-11-1950.

Then Messrs. Raman and Raman Ltd. moved this Court by a writ under Article 226 to quash the order dated 19-1-1950, 3-3-1950 and 7-11-

1950 and praying that permits might be issued to them; and this was ordered by this Court on the ground that the permanent permits had been

issued to Veerappa Pillai on 18-4-1949 on the understanding that it was subject to the result of the decision of the High Court in the appeal

preferred by Messrs. Raman. and Raman Ltd. and that, therefore, permits should issue to them in accordance with the decision in that appeal

dated 2-9-1949. On appeal against this judgment by Veerappa Pillai the Supreme Court held that the Motor Vehicles Act created a hierarchy of

authorities for dealing with applications for permits, that their duties were prescribed by the Act, that their decisions were liable to be reviewed by

the courts only if there was an error of jurisdiction or error apparent on the face of the record, that in fact the authorities did take into consideration

several matters of which the ownership of the buses was only one, that there was the fact that Veerappa Pillai was running service on temporary

permits from 1944, that there was also the fact that he had a permit from the French authorities at Karaikal which Messrs. Raman and Raman Ltd,

had not, that the latter did not follow the procedure prescribed by the Act in that they applied for the withdrawal of permits granted to Veerappa

Pillai whereas they ought to have objected to the grant of permits to him and that a decision based on a consideration of these facts was not liable

to be reviewed by courts as if they were sitting in appeal and that the order granting the permits, to Messrs. Raman and Raman Ltd. which could

be done only by the Transport authorities was in excess of jurisdiction.

49. The decision so far as it goes, it is conceded, does not directly deal with any of the points which arise for determination in these applications.

But certain observations occurring in the judgment would appear to lend support to the contentions of Mr. M. K. Nambiar for the respondents.

The Supreme Court observed :

The Motor Vehicles Act is a statute which creates new rights and liabilities and

pre scribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the description of the transport authorities and naturally depends on several circumstances which have to be taken into account and again

As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right.

50. These observations are general and if full effect is to be given to them the answer to the first of the four questions formulated in this judgment must be in the negative and the second question will not arise for consideration. It is argued for the petitioners that the question whether the

business of transport of buses was one which fell under Article 19(1)(g) of the Constitution was neither argued nor decided in --"Veerappa Pillai v.

Messrs. Raman and Raman Ltd.", Cri. A. 159 of 1951 (SC) and that the question did not even arise for determination on the facts of that case

and that the decision lays down only the law relating to the rights of citizens under the provisions_ of the Motor Vehicles Act prior to the

Constitution. As already mentioned the competing claims of Messrs. Raman and Raman Ltd., and Veerappa Pillai had their origin in transfers from

Balasubramania Pillai of the year 1944; the grant of permits eventually turned upon the grant of a permanent permit on 15-4-1949 to Veerappa

Pillai and the failure of Messrs. Raman and " Raman Ltd., to object to the grant of the renewal of the permits to Veerappa Piilai which was duly

made on 5-1-1950 and the unsustainability, under the provisions of the Motor Vehicles Act, of the application of Messrs. Raman and Raman Ltd.,

dated 28-11-1949.

It was the order passed on 19-1-1950 on the application of Messrs. Raman and Raman Ltd., dated 22-11-1949 that was taken up in appeal

before the Central Road Traffic Board, in revision before the Government, in Writ in the High Court and in appeal to the Supreme Court.

Therefore at all stages what had to be decided were the rights of the parties under the Motor Vehicles Act prior to the Constitution. The learned

Advocate General and other Counsel who appeared in Supreme Court in -- "Veerappa Pillai v. Messrs. Raman and Raman Ltd.", C.A. 159 of

1951 (SC) also state that no question was raised and no arguments were addressed on the basis of the Constitution.

51. When questions of a judicial character are entrusted to the decision of statutory bodies it will make a difference in the powers of interference

which the Courts possess according as they relate to fundamental rights or not. Where there is no question of fundamental rights, involved, and that

is the position in England where the Legislature is omnipotent and that will also be the position in India with reference to matters other than those

falling under Part 3 the power of the court to interfere with the decisions is limited to cases in which there is an error of jurisdiction or error

apparent on the face of the record and the like but where the decision is in respect of fundamental rights protected by the Constitution the Court

has the power and indeed is under a duty to examine whether the decision impugned satisfies all the statutory requirements, as for example, in a

case falling under Article 19(1)(g) whether the restrictions are reasonable and in the interests of the public. The Motor Vehicles Act was passed in

the year 1939 and at that time the powers of the Indian Legislature acting within the ambit of the jurisdiction conferred upon it, were sovereign

plenary and therefore the decisions of the Transport Authorities constituted under the Act were liable to be questioned only if there was an error of

jurisdiction or an error apparent on the face of the record. In -- "Veerappa Piliyai v. Messrs. Raman and Raman Ltd.", (Cri. A. No. 159 of 1951)

the Supreme Court was called upon to decide the rights of the parties under the Motor Vehicles Act before the Constitution and it is in that context

that the Supreme Court observed as follows:

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate

tribunals or bodies or officers act wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refuse to exercise

a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission error or excess has resulted in manifest

injustice.

That precisely is the jurisdiction of the English Courts in issuing Writ against the decisions of tribunals constituted under Acts of Parliament. As

observed by Lord Sumner in -- "R. v. Nat Bell Liquors Ltd.", (1922) 2 A C 128,

the supervisory jurisdiction through the writ of Certiorari

extends ""to two points"". One is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance

of the law in the course of its exercise. Vide the decision of the Court of Appeal in R v. Northumberland Compensation Appeal Tribunal", 1952 1

All E R 122 affirming the decision in 1951 1 All E R 268.

The observations of the Supreme Court that the provisions of the Motor Vehicles Act which prescribe an elaborate procedure for the grant of

permits are self-contained, that the applicant has no absolute right to get a permit and that it is within the discretion of the authorities to grant or

refuse one, would if we may respectfully say so, correctly represent the position under the Act before the Constitution; for the legislature was the

omnipotent and the citizen had no fundamental right on the ground of violation of which any legislation could be challenged. He must be content

with what the legislature chose to give him; his rights were only under the Act. Thus all the observations in the judgment in--"Veerappa Pillai v.

Messrs. Raman and Raman Ltd.", read along with the subject matter of the appeal clearly show that they define the rights of the applicants under

the Motor Vehicles Act before the Constitution.

52. Where the question arose with reference to fundamental rights the Supreme Court held that the validity of the decisions of the licensing

authorities must be judged with reference to the provisions of Part 3 of the Constitution. Vide -- "Rashid Ahmed v. Municipal Board. Kairana",

1950 S C J 324.

53. After bestowing the most anxious and careful consideration to the question we are of opinion that the observations in -- "Veerappa Pillai v.

Raman and Raman Ltd.", Cri. A. No. 159 of 1951 (SC) quoted above must be limited to cases under the Motor Vehicles Act arising before the

Constitution.

54. In this view the petitions will be posted for arguments on the merits.